IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6571 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHYAM MANOHAR S. OZA & OR

Versus

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Appearance:

1. Special Civil Application No. 6571 of 1993

MR PH PATHAK for Petitioner No. 1-2

MR DEEPAK V PATEL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 26/02/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India. The petitioner No.2 is the Union, namely, Gujarat Rajya Ardhsarkari Audhyogic Karmachari

Sangh and the petition is filed in respect of the work-charge employees whose names are mentioned in the list filed at Annexure "A" to the petition, consisting of 14 work-charge employees which, interalia, includes petitioner No.1, namely, Narendrasinh Bharatsinh. The petitioners have prayed for direction to the respondents to treat the petitioner employees as continued in service from the initial date of appointment and to declare the break of a day or two given in the service of the petitioner employees as artificial break and to grant the salary for the said period of breaks. The petitioners have also prayed for the direction to the respondent Board to grant all the benefits to them which are available to the workcharge employees of the respondent Board including the benefits in payment, leave, LTC etc. and to pay the arrears with 18% interest p.a. By way of interim relief, the petitioners have prayed for the direction to the respondents not to terminate/discharge and/or discontinue services of the employees whose names are mentioned at Annexure "A" to the petition and also for the directions to the respondents to extend the benefits of overtime to the petitioner employees for the work which they have performed more than 8 hours in a day.

2. This Court has issued notice on 06.07.1993 and status-quo as regards to the service position of the workcharge employees was ordered to be maintained till further order. Thereafter, the petition was admitted on 16.01.1995 and interim relief in terms of Clause 13 (E), namely, that the respondents shall not terminate the employees concerned except by due process of law and that they shall extend them the benefits available to the workcharge employees and also in terms of Clause 13 (F) that in case they are required to work over time, they shall be paid in accordance with law, was granted.

3. Mr. P.H. Pathak, learned advocate appearing for the petitioners submits that though the petitioners were appointed as workcharge employees an artificial break was given to them on the basis of 28/29 days appointment since 1983 onwards. He has further submitted that the petitioners have approached second time before this Court raising the same grievance. Earlier, the petitioners have filed S.C.A. No. 6028/88 before this Court. The petition was against the change of service conditions of the employees as despite the fact that they were employed as workcharge employees, in the year 1988, without any justification and without any opportunity of being heard,

the respondent Board has changed the mode of payment from monthly rated employees to the daily rated employees and the petitioners were paid daily wages as per the minimum wages prescribed by the Government. This Court has allowed the said petition and directed the respondent Board to restore the position of the petitioner employees which was prior to July/August, 88. The Court, however, has made clear in that judgment that Court did not decide the right and status of the petitioner in the employment with the respondent Board.

4. Mr. Pathak has further submitted that as per the directions issued by this Court in earlier decision, the respondent Board is duty bound to restore the petitioner employees as workcharge employees and the petitioner employees are required to be paid the difference of salary i.e. between monthly rated salary and daily wages. While payment of arrears calculating on the basis of monthly rated salary which the petitioner employees were getting prior to August, 88, the respondent Board had continued to show a break of a day two days on record and, therefore, the petitioner employees were not paid the difference of wages for two days from August, 88 till the direction issued by this Court. During all these period, the petitioner employees have worked continuously and were paid salary on the daily wage basis and, therefore, there was no valid justification or reason available to the respondents to deduct salary of 2 days from the amount paid to the petitioner employees. Mr. Pathak has further submitted that the practice adopted by the respondent Board to give an artificial break in service of the petitioner employees is ex-facie, bad and is only with a view to deprive the employees for the benefit of continuity of service. Hence, they are entitled to get the benefit of time scale of pay with all permissible allowances.

5. Mr. D.V. Patel, learned advocate appearing for the respondent Board has submitted that the petitioner employees were appointed only on adhoc basis and by way of stop-gap arrangements and there was no legal or justifiable right much less the fundamental right to claim regularisation in service at par with the permanent regular employees as a matter of course. The functions, nature of duties, educational qualifications, responsibilities, merits and experience of regular selected employees are different from the petitioner employees. Hence, they cannot claim any relief on the basis of "equal pay for equal work." As per Govt.

Resolution dated 17.10.1988, the labourers who have completed five years continuous service were to be placed in fixed pay scale and accordingly, all the petitioners have been placed in regular pay scale of Rs. 750-950 with all permissible allowances as they have completed five years continuous service. He has, however, made it clear that the petitioners are not entitled for LTC, increment and other benefits available to regular employees. Hence, there is no justification for raising any grievance in this petition and hence, the petition be dismissed.

6. Mr. Patel has relied on the decision of this Court in the case of BALUBHAI G. MAKWANA V/S. STATE OF GUJARAT AND OTHERS, (2002) 43 (4) G.L.R. 2940 wherein it is held that "a person was appointed on a temporary post did not acquire any substantial right to the post and that mere prolonged continuous adhoc service did not ripen into a regular service to relieve permanent or substantive status."

7. He has further relied on the decision of the Hon'ble Supreme Court in the case of STATE OF U.P. AND OTHERS V/S. RAJKARAN SINGH, (1998) 8 S.C.C. 529 wherein it is held that merely because a person continues under the interim order of the Court, such continuation on the post cannot and does not confer on him any right for continuation, it does not enhance his case for regularisation. It is only an interim arrangement pending decision by the Court and cannot disturb the position in law and equities, as on the date of the petition.

8. On the basis of the aforesaid judgments, he submitted that since the petitioner employees were continued in service pursuant to the interim order passed by this Court, it cannot confer any right on the petitioner employees to be regularised.

9. After having heard learned advocates appearing for the respective parties and after having gone through the pleadings made by the parties in memo of petition as well as in Affidavit-in-reply and after having considered the earlier judgment of this Court in the petitioners' own case and other authorities cited before the Court, I am of the view that so far as the grievance raised by the petitioners with regard to artificial break in service is

concerned, it no longer survives as it was stated in the reply that all the workcharge employees whose names are mentioned in Annexure A are placed on the fixed salary and they have been regularly paid without deducting any amount on such artificial break. A salary sheet is also produced before the Court wherein the salary has been calculated on the basis of the salary for the whole month which interalia includes D.A., H.R.A., C.L.A., M.A., T.A., etc. The petitioner employees are, therefore, treated as workcharge employees and all benefits which are given to the workcharge employees are given to the petitioners.

10. The only dispute which remains in the petition is whether the petitioners are to be regularised or not and whether benefits with regard to LTC, Leave, increment etc., are to be given to the petitioners or not. It goes without saying that if the petitioners are treated as workcharge employees, then there is no artificial break in their service. They are to be continued. As far as the question regarding regularisation is concerned, this Court has protected their services by granting interim relief in 1995 and the position in law is very clear that if by virtue of the stay order of the Court, the petitioners are continued in service, it would not confer any legal right on the petitioners and hence, this Court does not think it fit and proper to issue any direction with regard to the regularisation of the service of the petitioners. It is however, made clear that the respondent Board would not terminate the services of the petitioner without following due procedure of law and all benefits which are given to the workcharge employees should also be given to the petitioner - employees. If the petitioners want to get any other benefit, they should file their statement of claim by making an appropriate reference to the Reference Court and get the issue decided or adjudicated by that Court. It is not just and proper for this Court to issue any direction in this regard. If proper effect is not given to this judgment by the respondent Board, it is open for the petitioners to seek any clarification and liberty is reserved to the petitioners to this effect.

11. With this observations, the petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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